

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

NAPLETON 1050, INC. D/B/A NAPLETON
CADILLAC OF LIBERTYVILLE

and

INTERNATIONAL ASSOCIATION OF
MACHINISTS & AEROSPACE WORKERS
AFL-CIO

Cases: 13-CA-187272
13-CA-196991
13-CA-204377

and

WILLIAM GLENN RUSSELL II, an Individual

**RESPONDENT'S EXCEPTIONS TO THE DECISION AND
RECOMMENDED ORDER OF THE ADMINISTRATIVE LAW JUDGE**

Pursuant to Section 102.46 of the National Labor Relations Board's Rules and Regulations, Respondent Napleton Cadillac, ("herein "Napleton" or Respondent) submits the following exceptions to the Decision of the Administrative Law Judge ("ALJ") issued April 4, 2018. A brief in support of these exceptions is filed herewith.

1. That portion of the ALJ's decision in which the ALJ found there is strong evidence in support of the government's case and it warrants a finding of antiunion motivation for the employer's actions. (ALJD p.2, lines 5-6)¹

¹ Throughout the Exceptions and Supporting Brief, Napleton Cadillac shall be referred to as "Napleton" or "Respondent"; the Administrative Law Judge will be referred to as the "ALJ"; and the National Labor Relations Board will be referenced as "Board." References to the ALJ's decision will be referred to as "ALJD"; references to the underlying transcript will be referred to as "Tr._." Any reference to the exhibits shall be designated to as "GC _" or "R_."

2. That portion of the ALJ's decision in which the ALJ found that the employer has failed to show that it would have taken the same actions in the absence of union activity. (ALJD p.2, lines 6-7).

3. That portion of the ALJ's decision in which the ALJ found that the employer gave the impression that it had engaged in unlawful surveillance of employee union activities. (ALJD p.2, lines 12-14).

4. That portion of the ALJ's decision in which the ALJ found that the removal of striking employees tools was unlawful retaliation for the strike. (ALJD p.2, lines 20-21).

5. That portion of the ALJ's decision in which the ALJ found that the employer's threat of replacement for striking was framed in a way that unlawfully implied job loss. (ALJD p.2, lines 22-23).

6. That portion of the ALJ's decision in which the ALJ found that if replaced an employee would not be reinstated but put on a preferential hire list to await a vacancy. (ALJD p.2, lines 23-25).

7. The ALJ's ruling excluding Respondent's primary counsel from the hearing under the guise of a sequestration order. (ALJD p.3, line 15, fn.1).

8. That portion of the ALJ's decision finding that Local 701 began organizing in early August 2016. (ALJD p.4, lines 22-23; ALJD p. 18, lines 22-23).

9. That portion of the ALJ's decision finding Russell's testimony was fully plausible and uncontradicted. (ALJD p. 8, lines 32-33).

10. That portion of the ALJ's decision that finding that Inman was lead to testify that he was not aware of union activity prior to receiving the petition. (ALJD p. 8, at fn. 9)

11. That portion of the ALJ's decision that found that Soffietti's failure to hear any discussion regarding the union does not rebut Russell's testimony. (ALJD p. 9, lines 7-9).

12. That portion of the ALJ's decision finding that the issue of a layoff was first decided upon by Jopes with Hendricks on Friday October 21, three days after the union election. (ALJD p.11, lines 11-12).

13. That portion of the ALJ's decision that [Respondent CFO] Jopes is "making up," his testimony (regarding the timing of a layoff.) (ALJD p.13, line 31)

14. That portion of the ALJ's decision finding that the November 4 apology to Russell referenced the union campaign and election as motivating the action against Russell. (ALJD p.19, lines 37-38).

15. That portion of the ALJ's decision finding employer animus as motivation for the action taken against Russell. (ALJD p.19, lines 39-40).

16. That portion of the ALJ's decision finding that Russell was an employee of Respondent. (ALJD p.21, lines 20-21).

17. That portion of the ALJ's decision finding that Respondent hired every service technician of Weil without requiring an application of other affirmative steps to secure the job. (ALJD p.21, lines 30-31).

18. That portion of the ALJ's decision finding that Russell was an employee (on leave) from June 2016 and was discharged on October 27, 2016. (ALJD p.22, lines 1-4).

19. That portion of the ALJ's decision finding that Russell was discharged on October 27, 2016 in retaliation for the employees' selection of union representation. (ALJD p. 22, lines 6-8).

20. The ALJ's failure to raise an adverse inference against Counsel for the General Counsel for failing to call Russell's wife to the stand to corroborate a critical portion of testimony.

21. That portion of the ALJ's decision that a statement of "voting that way" motivated the layoff, at least in part. (ALJD p.22, lines 15-16).

22. That portion of the ALJ's decision that there is no documentation - no notes, no email, no message slips, no report, nothing - that indicates any discussion of layoffs prior to Friday October 21. (ALJD p.23, lines 6-8).

23. That portion of the ALJ's decision finding that the decision (of a layoff) could not have been made before October 14. (ALJD p.24, lines 26-28).

24. That portion of the ALJ's decision finding that the Respondent did not meet its burden showing that it would have laid off Geisler in the absence of union activity. (ALJD p.24, lines 1-7).

25. That portion of the ALJ's decision finding that Inman unlawfully created the impression that employees' union activities had been surveilled by the employer. (ALJD p.24, lines 51-52).

26. That portion of the ALJ's decision finding that requiring striking employees to remove their toolboxes violates the Act. (ALJD p.25, lines 36-38).

27. That portion of the ALJ's decision finding that Respondent's insurance policy would not cover striking employee toolboxes as "unbelievable." (ALJD p.27, lines 18-26).

28. That portion of the ALJ's decision finding that the insurance policy is "undocumented" and does not state that the insurance policy does not cover striking employees tools. (ALJD p.27, lines 33-40).

29. That portion of the ALJ's decision finding that other striking employees tools were covered by the collective bargaining agreement as "piffle." (ALJD p.27, lines 51-53).

30. That portion of the ALJ's decision finding that Jopes admitted strikers were no longer employees. (ALJD p.28, lines 21-22).

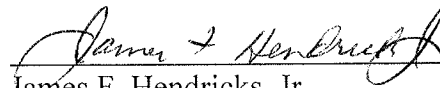
31. That portion of the ALJ's decision finding that the Respondent's notice to employees that if replaced they would be placed on a preferential hire list amounts to an announced intention to unlawfully refuse to reinstate strikers even if they are non permanently replaced. (ALJD p.31, lines 12-14).

32. Respondent excepts to the ALJ's refusal to permit Respondent's counsel to review witness statements for the duration of the hearing.

33. Respondent excepts to the ALJ's refusal to issue a subpoena sanction against a witness who failed to comply with a properly issued subpoena.

34. Respondent excepts to the ALJ's ruling that proceeding to trial was appropriate in the face of an outstanding integrally related unfair labor practice charge.²

Respectfully submitted,



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Submitted: May 2, 2018

² This exception may be mooted by the fact that the unfair labor practice charge in question was dismissed by the Region on February 23, 2018. It is raised here merely to preserve the issue in the unlikely event an appeal is granted to the dismissal of the charge.

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that the foregoing **Respondent's Exceptions to The Decision and Recommended Order of the Administrative Law Judge** was filed electronically with the National Labor Relations Board, Office of the Executive Secretary, before 5:00 p.m. on May 2, 2018.

Service of this **Respondent's Exceptions to The Decision and Recommended Order of the Administrative Law Judge** was sent via electronic mail on May 2, 2018 to the following:

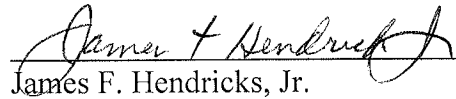
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